

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GLADYS MITCHELL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 160,217
<b>PROVIDENCE-ST. MARGARET HEALTH CENTER</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY CO.</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant filed an Application for Review before the Appeals Board requesting review of an Award entered by Administrative Law Judge Alvin E. Witwer dated October 11, 1994.

**APPEARANCES**

Claimant appeared by her attorney, Denise E. Tomasic of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, Timothy Lutz of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Robert Benham of Kansas City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award. The stipulations included an agreement between the respondent and the Kansas Workers Compensation Fund filed on January 12, 1993 that in the event an award was entered in this matter that the respondent would be responsible for 50 percent of the

award and the Workers Compensation Fund would be responsible for 50 percent of the award.

### ISSUES

Claimant requested review of the following issues:

- (1) Nature and extent of claimant's disability.
- (2) Whether medical expenses in the amount of \$241 for treatment with Dr. Kathryn E. Welch for treatment of claimant's rheumatoid arthritis condition are authorized medical expenses to be paid by the respondent.
- (3) Whether claimant is entitled to temporary total disability benefits from December 6, 1991 through January 2, 1992.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, hearing the arguments and considering the briefs of the parties, the Appeals Board finds as follows:

(1) The Administrative Law Judge found claimant was entitled to permanent partial general disability benefits of 5 percent. He limited claimant's disability benefits to the functional impairment opinion of Roger W. Hood, M.D., an orthopedic surgeon, who was appointed by the Administrative Law Judge to perform an independent medical examination of the claimant. Claimant argued that she was entitled to a much larger work disability award either as a result of her bilateral carpal tunnel syndrome condition or as a result of a combination of her carpal tunnel syndrome and rheumatoid arthritis conditions. For the reasons set forth below, the Appeals Board affirms the Administrative Law Judge's Award limiting the claimant to a 5 percent permanent partial general disability based on functional impairment associated only with her work-related bilateral carpal tunnel syndrome condition.

Claimant commenced her employment with the respondent on June 13, 1988 in the job position of a housekeeper. Claimant first started having problems with her upper and lower extremities when she was assigned to clean offices on the second floor. Claimant contended that these new second-floor housekeeping duties were heavier because there were a number of public areas to clean. Additionally, claimant testified she was required to clean, on a daily basis, a number of patients' rooms. Claimant's job duties consisted of mopping, sweeping, vacuuming, dusting, cleaning stools, washing patients' beds and emptying trash receptacles weighing up to 50 pounds. Claimant testified that the second-floor housekeeping duties were stressful because of the large amount of work that was required to be completed which was closely scrutinized by respondent's management. Claimant's job duties required her to perform repetitive motions with her upper extremities and to be on her feet for a full 8-hour shift except for her scheduled breaks.

The respondent presented the testimony of claimant's immediate supervisor, Michael Anaya, director of housekeeping. Mr. Anaya was very familiar with the claimant's job duties as he testified that he had actually worked the job at one time for a one- to two-week period. Mr. Anaya's description of claimant's job duties substantially differed from claimant's description. Mr. Anaya characterized claimant's work as light work where the employee was able to work at her own pace in a non-stressful environment. Mr. Anaya also indicated that the normal trash receptacle that was required to be emptied weighed only between 12 and 16 pounds with a maximum weight of 25 pounds. In contrast, claimant testified she had to occasionally lift up to 50 pounds. Mr. Anaya did verify that claimant was required to be on her feet the full 8-hour shift and also had to perform repetitive motion activities of her upper extremities in order to perform her job duties.

Claimant first became symptomatic in her shoulders and arms in May of 1991. Claimant testified that prior to these symptoms she had no problems performing her duties either for the respondent or for the KU Medical Center where she worked prior to working for the respondent. Claimant's only previous problem was a swollen right knee, while working for the KU Medical Center, which was diagnosed as arthritis. Claimant, on her own, sought medical treatment in May of 1991 from her family physician, Dr. Julian Nunez, and from Dr. Fred Rice, an orthopedic surgeon. Finally, respondent referred the claimant in October of 1991 to Robert L. Coleman, M.D., a plastic surgeon in Kansas City, Kansas. After a positive EMG, Dr. Coleman, on October 21, 1991, performed a right carpal tunnel syndrome release. Claimant's last day worked was October 18, 1991. At the time of the regular hearing, claimant had not returned to work for the respondent and she was not working for any other employer. Dr. Coleman released claimant to return to her regular employment with the respondent on November 11, 1991, but claimant testified she did not return because of complaints of continuing discomfort. Another EMG test was administered and found to be positive on the left with median nerve compression neuropathy.

At that time, claimant also exhibited symptoms compatible with an arthritic condition. Claimant testified that, prior to her seeing Dr. Coleman for her carpal tunnel syndrome condition, she was referred by Dr. Rice to Kathryn Welch, M.D., a board-certified rheumatologist, for discomfort and swelling in her hands. Dr. Welch first saw claimant on October 3, 1991, and after diagnostic testing she determined that claimant had developed rheumatoid arthritis over approximately the prior six months. Dr. Welch saw the claimant three times in 1991, once in 1992 and a final time on March 19, 1993. When Dr. Welch saw the claimant a second time, November 17, 1991, she took the claimant off work because of the rheumatoid arthritis. Dr. Welch never released the claimant to return to work as a housekeeper for the respondent because of the rheumatoid arthritis. Dr. Welch testified in this matter on behalf of the claimant and opined that the claimant's work activities aggravated her rheumatoid arthritis condition and made the condition worsen. Dr. Welch did, however, recognize that rheumatoid arthritis is a naturally progressive disease. Dr. Welch placed permanent restrictions on the claimant of no lifting of over seven to ten pounds, no working continually on her feet and no repetitive work motions with her hands. Dr. Welch opined that because of claimant's rheumatoid arthritis condition,

separate from her carpal tunnel syndrome condition, claimant could not perform her job duties as a housekeeper for the respondent.

In January of 1992, claimant made a request to the Administrative Law Judge to change treating physicians to Dr. Lynn D. Ketchum, a hand surgeon, in Overland Park, Kansas. The Administrative Law Judge authorized Dr. Ketchum who found the claimant had carpal tunnel syndrome on the left and performed a carpal tunnel release on January 23, 1992. Dr. Ketchum released claimant without restrictions to return to work for the respondent on March 9, 1992.

Respondent, at that time, offered claimant the opportunity to return to her employment at her regular job as a housekeeper. Claimant testified that she declined the respondent's offer as she felt she could not go back to the job because of her arthritic condition. Furthermore, claimant testified she had not tried to find a job since she had left her employment with the respondent on October 18, 1991. Claimant testified that she felt she did not have the education or background to perform any type of sedentary job.

Dr. Arnold L. Katz, a board-certified rheumatologist, who was formerly a professor at the University of Tulsa Medical College for 11 years teaching rheumatology, now in private practice, examined the claimant on two occasions, July 2, 1992 and October 26, 1992, at the request of the respondent. Dr. Katz is located in Overland Park and limits his practice to rheumatology. Dr. Katz, after examining medical records, taking a history from the claimant and conducting a physical examination, opined that the claimant had a very early and mild rheumatoid arthritic condition mainly confined to her hands. Dr. Katz concluded that the claimant had more subjective complaints than actual objective findings. His x-ray examination of claimant's hands revealed no joint destruction or any erosive changes normally associated with an advanced and more severe case of rheumatic arthritis. Dr. Katz opined that the claimant's work activity, while employed by the respondent, did not aggravate her arthritic condition. He assessed no permanent functional impairment to the arthritic condition and placed no permanent work restrictions on the claimant. Dr. Katz further opined that claimant could perform the work activities that she had previously performed as a housekeeper for the respondent.

Roger Hood, M.D., an orthopedic surgeon, board-certified in rheumatology surgery, also testified in this case and saw the claimant once on October 4, 1993 pursuant to an Order of the Administrative Law Judge for an independent medical examination. Dr. Hood was supplied with medical records in reference to claimant's previous medical treatment and previous x-rays. Dr. Hood took a medical history from the claimant and performed a physical examination. Dr. Hood diagnosed claimant with general rheumatoid arthritis and a history of right and left carpal tunnel syndrome. He opined that claimant had rheumatoid arthritis in both upper and lower extremities but more symptomatic in the upper extremities. Dr. Hood expressed his opinion that as a result of the claimant's work-related bilateral carpal tunnel syndrome, she had suffered a 5 percent whole body functional impairment. Dr. Hood attributed claimant's carpal tunnel syndrome condition to her work activities. Furthermore, Dr. Hood expressed his opinion that the claimant's rheumatoid arthritic condition resulted in a 20-25 percent whole body functional impairment rating. Dr. Hood

opined that the claimant's work activities had aggravated her rheumatoid arthritic condition but he could not state within a reasonable degree of medical certainty that the rheumatoid arthritis was permanently aggravated by her work activities. Dr. Hood permanently restricted claimant from lifting over 10 pounds on an occasional basis with a maximum lift of 25-30 pounds. This included restrictions for her bilateral carpal tunnel syndrome and rheumatoid arthritic conditions. Dr. Hood attributed the majority of the restrictions to the rheumatoid arthritic condition. Dr. Hood testified that the bilateral carpal tunnel condition would only contribute to a small portion of the restrictions. The carpal tunnel restrictions would not be significant and would include no repetitive lifting, occasional lifting of 30 pounds and a single lift of up to 50 pounds. Dr. Hood agreed that the rheumatoid arthritic condition was a naturally progressive disease and regardless of what activities the claimant would perform, the condition would slowly worsen over time.

The first question that has to be addressed in this case, is whether the facts present a presumption of no work disability. This presumption is contained in K.S.A. 1991 Supp. 44-510e(a) which provides:

“There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury.”

The evidentiary record is clear that the claimant has not worked anywhere since the last day she worked for the respondent on October 18, 1991. Therefore, she has not earned a wage comparable to the wage she was earning when she was injured while performing her work duties for the respondent. However, the evidence also is clear that the respondent offered claimant an opportunity to return to her regular job as a housekeeper after her second carpal tunnel surgery and she refused. Accordingly, the question is whether the claimant was capable of performing her regular job duties within the permanent work restrictions that were placed upon her as a result of her work-related injuries. First, the Appeals Board finds that the greater weight of the credible evidence in this case established that claimant's rheumatoid arthritic condition was not caused, aggravated or intensified by her work activities. The Appeals Board finds the testimony of Dr. Katz to be the most persuasive evidence in regard to this issue. The Appeals Board further finds that the work restrictions, as determined by Dr. Hood for claimant's carpal tunnel syndrome, would not have prevented her from performing her job as a housekeeper for the respondent. The Appeals Board finds that the claimant refused to return to a comparable wage job within her restrictions and, thus, the presumption of no work disability will be applied. See Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

Futhermore, since there is no evidence in the record to the contrary, the Appeals Board finds that had claimant accepted the proffered employment she would still be employed by the respondent and, therefore, she is not eligible for a work disability. Accordingly, the claimant being not eligible for work disability is limited to the percentage of functional impairment contained in the record. See K.S.A. 1991 Supp. 44-510e(a). The only functional impairment rating in the record was supplied by Dr. Hood in the amount of

5 percent of the whole body for claimant's work-related bilateral carpal tunnel syndrome. The Administrative Law Judge awarded the claimant a permanent partial general disability in the amount of 5 percent which the Appeals Board affirms.

(2)(3) The remaining issues would have been reviewable only if the Appeals Board would have found that claimant's rheumatoid arthritic condition was work related. Having found it nonwork related, these two issues do not need to be reviewed by the Appeals Board.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer dated October 11, 1994, should be, and is hereby, affirmed in all respects.

All other orders contained in the Award of Administrative Law Judge Alvin E. Witwer, dated October 11, 1994, are adopted by the Appeals Board as its own and are incorporated in this Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Denise E. Tomasic, Kansas City, KS  
Timothy Lutz, Overland Park, KS  
Robert Benham, Kansas City, KS  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director